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Estonian Presidency
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The REFIT exercise: a practitioner's point of view

Thea Palm, Ministry of Economic Affairs and Communications of Estonia

thea.palm@mkm.ee

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The current framework

- **Consumer Protection Cooperation Regulation** enabling to handle cross-border breaches, no consumer redress possible.
- **Unfair Commercial Practices Directive** aiming to hinder the negative effect on consumers' behaviour before the decision, no direct right to individual remedies.
- **Consumer Rights Directive** strengthening the rights of the consumer inter alia by requirements for pre-contractual information, application to intermediaries is unclear.
- **Alternative Dispute Resolution Directive** providing consumers access to an out-of-court body for resolving their contractual disputes with traders, no binding decision required.

Sample cases (1)

Online shop mainly offering various fashion goods (*misleading precontractual information and refusal to fulfil the obligations*)

- Not able to deliver the goods in the expected time advertised on the webpage (14 days) and return the money in case of a breach of the contractual obligations.
- Several deadlines given to correct the information on the webpage and perform the obligations to the consumers ► information to the public (blacklist of the CPB) and penalty payment.
- Continuous ability to make orders and transactions ► request to the hosting service provider to restrict access to the webpage ► several hours later the domain was moved to another hosting service provider.
- CPB did not use another possibilities to restrict the activities due to **unclear competences arising from legislation and limits of the discretion**: request to the domain registrar to suspend the domain and to the banks to close the payment link provided by them.
- Replacement of the responsible person on the board in order to escape liability ► **impossible for consumers to seek a refund through ADR or court proceedings.**

Sample cases (2)

Car evaluation websites directed to other EU Member States (*subscription traps*)

- Contract concluded with an automatic obligation to pay by clicking the button „evaluate the car – thank you“ – withdrawal possible only before service provision has started by clicking the button „cancel“ ◀ no confirmation of concluding the contract sent to the consumer.
- In case of „late payment“ by the consumer the latter has to agree to all the costs determined by the trader arising from debt collection activities.
- Refusal by the trader to observe the precept and to bring their activities into conformity with the law ► an appeal filed in court by the trader to restrict proceedings by the CPB ► dismissed.
- The trader has brought their site into accordance with the precept some months after regular warnings and penalty payments issued by the CPB – **what about the damage to the consumers that already agreed to pay in the past?**

Sample cases (3)

Online intermediary platforms for travel (voucher site) and concert ticket services (*professional diligence of the intermediary and right for reimbursement*)

- I The voucher site declared insolvency ► ca 1800 vouchers were sold and 80% of the payments by travellers were transferred to the cross-border tour operator, still they refused to conduct the packages and reimburse consumers ► investigation revealed: the tour operator did not make any flight and accommodation reservations for the passengers or hand out guarantee certificates ► CPB contacted the CPC and ECC bodies and the prosecutor's office in the state of the tour operator.
- CPC: the case is not about collective rights but individual consumer rights, ECC: ADR terminated proceedings because the trader ignored their letters ► does the intermediary have any liability for performing their professional diligence by enabling the transactions – **the right to transfer the money to another trader only after the service has been commenced?**
- II The concert organiser informed about the cancellation a day before the event ► in half a year the termination of the reimbursements due to the court proceedings between the organizer and third country distributor ► refusal by the ECC of the concert organiser's country to forward the claims to the local ADR ◀ decision of non-binding nature and no dispute about the obligation to refund.
- Court decision on one claim – the intermediary is acting only for the purpose of enabling the conclusion of a contract between the organiser and user; according to the sales contract the organiser is liable for the performance of the contract ◀ **the reimbursement depending on the final decision of the court in the case organizer versus distributor?**

What changes are expected from the stakeholders?

- **83% of the national authorities in the CRD survey:** pre-contractual information requirements for distance contracts likely to require enforcement actions.
- Commission's evaluation of the CPC Regulation: **limited powers to obtain information from the domain registrar and financial police on the real identity of the trader, also to order the suspension or closing down of websites.**
- 2016 consumer survey for Fitness Check: **33% of respondents experienced misleading or aggressive commercial practices last year.**
- One of the most important factors for decision-making is **the availability of means to obtain a remedy or redress if something goes wrong** – only the price of a good or service was considered more important. Main obstacle that prevents the achievement of the objectives of the legislation: **shortcomings concerning redress opportunities**, which detracts from consumers' propensity to seek redress.
- 2016 Eurobarometer data: for **41%** of those respondents to the survey who had used the services on collaborative platforms, **the main disadvantage is not knowing who is responsible in case of a problem.**

**Are we
empowered for
that purpose?**

Conclusions

- Enforcement authorities need powers fit for market developments as foreseen in the new CPC Regulation, incl. where appropriate **to seek to obtain commitments from the trader to offer adequate remedies to the consumers** concerned by the infringement.
- The proper implementation of UCPCD requires **entitlement for redress**.
- The responsibilities/liability of intermediaries must already be **transparent and presented in a clear manner in the contractual terms**.

Thank you!

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